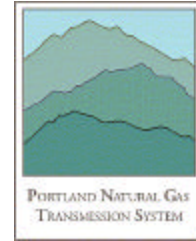


## PNGTS Operating Co., LLC

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January 31, 2003

Energy Facilities Siting Board  
One South Station  
Boston, MA 02110

Re: Comments on Proposed Rulemaking in EFSB 02-RM-2

Dear Board Members:

Portland Natural Gas Transmission System ("PNGTS") offers the following brief comments in response to the December 20, 2002 Energy Facilities Siting Board ("Siting Board") Final Order Opening Rulemaking ("Rulemaking") in the above-referenced docket. In the Rulemaking, the Siting Board proposes new regulations requiring Siting Board review and approval of certain natural gas pipeline projects constructed in Massachusetts by interstate pipelines that are operating under the Natural Gas Act ("NGA") and subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") and the Department of Transportation ("DOT").

By way of background, PNGTS is a federally-regulated interstate natural gas pipeline that extends from the Quebec border near Pittsburg, New Hampshire through Maine, New Hampshire, Vermont and Massachusetts. From Westbrook, Maine, PNGTS is a co-owner of a 30-inch diameter natural gas pipeline that extends through New Hampshire to an interconnect with the Tennessee Gas Pipeline in Dracut, Massachusetts. Under the Siting Board's proposed regulations in the Rulemaking, PNGTS' construction of new facilities could be subject to the Siting Board's review. Accordingly, PNGTS is filing this letter with the Siting Board in opposition to the Rulemaking.

PNGTS opposes the Rulemaking on the basis that the FERC has exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce. See Schneidewind v. ANR Pipeline Co., 485 U.S. 293, at 300-305 (1988), ("The NGA [Natural Gas Act] confers upon FERC exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce for resale."). Here, the Siting Board's proposed Rulemaking seeks to extend state regulation over activities (i.e., construction activities by FERC-regulated pipelines) that are already regulated by the federal government. The Rulemaking is thus in conflict with the existing comprehensive federal regulation. In such a case, state regulation that is inconsistent or otherwise conflicts with federal regulation is deemed preempted. See also, Hines v. Davidowitz, 312 U.S. 52 (1941) and Rice v. Santa Fe Elevator Corp., 31 U.S. 218 (1947). PNGTS supports, and incorporates herein by reference, the legal arguments regarding federal preemption in the Comments of Duke Energy Gas Transmission Corporation and Maritimes & Northeast Pipeline, L.L.C. on Proposed Rules filed in this proceeding.

For the reasons set forth above, PNGTS respectfully opposes the proposed Rulemaking to the extent it seeks to extend Siting Board jurisdiction over interstate natural gas pipeline companies that are operating under the NGA and regulated by the FERC.

Very truly yours,  
Portland Natural Gas Transmission System

David K. Moynihan  
General Counsel

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